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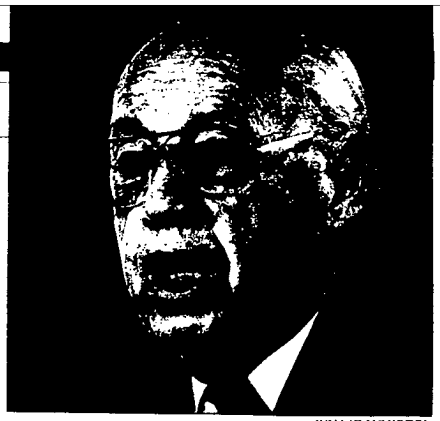
Trying Spies in a House of Mirrors

Hard to catch, harder to prosecute



BRUCE HOERTEL

Publish and perish: *CIA chief Casey*

You're Breckinridge Willcox, the U.S. attorney for Maryland, and your office is prosecuting an alleged spy. You know that Ronald W. Pelton, a onetime low-level employee of the National Security Agency, met with Soviet operatives in Vienna. You have wiretaps, passports, bank records and Pelton's own alleged admissions to FBI agents. You're prepared to lay out the story of a man who, after going bankrupt and drifting about in a nomad's lifestyle, allegedly sold out his country for $35,000. You have, in short, a compelling case, one that should lead jurors to a flush of retributive anger this week when they hear the details of the damage Pelton allegedly caused.

But they won't.

You're going to pull your best punch because U.S. intelligence has insisted that doing otherwise can only help the Soviets.

Such are the problems of prosecuting spies. winning a conviction becomes almost secondary to preserving what's left of the stolen secrets. The Pelton trial, which began last week, has become an exercise in damage control. U.S. intelligence officials apparently hope that the Soviets may not fully understand all the implications of the information Pelton allegedly gave them and don't want them discussed in a public courtroom. "The NSA and CIA really complicate our lives," says Willcox. "We're going to try the case by walking around the periphery." That compromise ended months of negotiation in which intelligence officials argued that it might be wiser not to prosecute Pelton than to risk further disclosures.

In recent years federal law has been changed to make it easier for courts to handle—and prosecutors to pursue—espionage cases. In the 1970s defendants sometimes bluffed the government out of cases by engaging in so-called "graymail," a threat to reveal classified material during their trials. But when the government persisted, as in the case of 23-year-old Christopher Boyce, a clerk who sold top-secret satellite data to the Soviets, prosecutors invoked as little classified data as possible. In 1980 Congress passed the Classified Information Procedures Act (CIPA), which set new rules. Before the trial begins, defense lawyers are given security clearance for classified information (raising the prospect of a governmental veto of lawyers it deems security risks). Then they meet in private with the presiding judge and prosecutor to discuss what secrets they plan to use at trial. Under CIPA the trial judge may exclude classified data, even if it is legally relevant to the case. Prosecutors are comfortable with the new law. Defense attorneys aren't: "It's nearly impossible to get all the evidence you need before the jury because of CIPA," says A. Brent Carruth of Van Nuys, Calif. The handicaps aren't necessarily fatal, however. Carruth was the lead defense lawyer in the only espionage case the Feds lost in a decade, the prosecution of Army intelligence officer Richard Craig Smith, who was charged with naming secret agents to the Soviets.

Best card: As it happens, the CIPA process was not invoked in the Pelton case because the defense team agreed not to discuss classified material. A similar inhibition hobbled the prosecution, rendering it unable to produce for the jury the most damning evidence it was believed to possess. While he has pleaded not guilty, it is not clear what form Pelton's defense will take. He lost his best card during pretrial skirmishing when U.S. District Judge Herbert F. Murray refused to suppress incriminating statements Pelton made to FBI agents before they arrested him last year.

Meanwhile, another controversy arose over press coverage of the trial. CIA Direc-

UPI—BETTMANN NEWSPHOTOS

A security system that gives obscure men keys to priceless national intelligence: *Boyce (left) and Pelton*

PEARSON—THE BALTIMORE SUN

tor William Casey in particular was exercised about the disclosure of classified items Pelton allegedly sold. Casey threatened to seek prosecution of several news organizations. He seemed chiefly concerned with a story under preparation by reporters at The Washington Post. He arranged for President Reagan to call Katharine Graham, chairman of the Post Company (which also owns NEWSWEEK). Last December Graham gave a speech in which she called for cooperation between the press and national officials to prevent inadvertent publication of secrets, and on May 10 Reagan took her up on the offer, advising her in a telephone call that the proposed story "would do irreparable harm to our national security." The Post withheld its story for several weeks. But last week, after NBC News broadcast some details of the Pelton case, the paper printed an expurgated version of its report, describing in a general way how Pelton had allegedly compromised a U.S. operation that intercepted Soviet communications. "I kept out technical details because the highest national-security officials looked me in the eye and said it would threaten national security and American lives," said Post executive editor Benjamin C. Bradlee. "I don't think that's true, but I can't prove it."

Courthouse brawl: Casey also asked the Justice Department to prosecute NBC for violation of a 1950 statute barring disclosures of "communications intelligence." NBC's brief report on the Pelton trial, prepared by correspondent James Polk, included a code name for the compromised program and said that it involved American efforts inside Soviet harbors. The law cited by Casey has never been used against the major media, even though reports about the operation at issue in the Pelton case have surfaced several times in the past 10 years. There is a strategic reason why it may be left on the shelf: a CIA intent on keeping secrets must look with distaste at the prospect of a public courthouse brawl with a press organization.

Even in its sanitized form, Pelton's trial should make for riveting courtroom drama. Jurors will hear the tale of a $24,500-a-year government worker who had access to some of the nation's priceless secrets. The FBI discovered Pelton's involvement only last fall, apparently with the help of Soviet defector Vitaly Yurchenko, a KGB colonel who reportedly was one of Pelton's first contacts. Yurchenko returned to the U.S.S.R. under mysterious circumstances last winter and now will be but one of the missing pieces at the trial. Unusual? Not for spy cases. Assistant Attorney General Stephen Trott calls them "houses of mirrors." During the Pelton trial at least, no one seems ready to throw stones.

ARIC PRESS *with* RICHARD SANDZA
in Washington